

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

: _____ :

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

[18] MICHAEL WEISS,
Defendant.

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:
: Case No: 12-CR-922 PG
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: _____ :

TRANSCRIPT OF SENTENCING HEARING
HELD BEFORE THE HONORABLE JUAN M. PÉREZ-GIMÉNEZ
JOSÉ V. TOLEDO U.S. COURTHOUSE, OLD SAN JUAN, PUERTO RICO
FRIDAY, MAY 30, 2014, BEGINNING AT 11:30 A.M.

: _____ :

A P P E A R A N C E S:

For the United States of America:

Assistant U.S. Attorney Marshal Morgan

For the Defendant:

Maria T. Arsuaga, Esquire

Charles Ross, Esquire, *Pro Hac Vice*

ALSO PRESENT:

Omar Flaquer-Mendoza, Courtroom Deputy Clerk

U.S. Probation Officer Miguel A. Arroyo-Domenech

Sentencing Hearing - [18] Michael Weiss

1 THE COURTROOM DEPUTY: Criminal case 12-922.
2 United States of America versus Michael Weiss. Case
3 called for sentence.

4 On behalf of the government, Assistant U.S.
5 Attorney Marshal Morgan. On behalf of the defendant,
6 Charles Ross and Maria Arsuaga. The defendant is
7 present in court.

8 MR. MORGAN: Good morning, Your Honor.
9 Ready to proceed.

10 MR. ROSS: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MS. ARSUAGA: Good morning, Your Honor.
13 Maria Arsuaga on behalf of Mr. Weiss.

14 THE COURT: Good morning.

15 MR. ROSS: And Charles Ross on behalf of
16 Mr. Weiss, Your Honor. Your Honor, I don't know how
17 Your Honor wants to proceed this morning; however, if
18 you'd want to go through the objections that we had
19 filed to the probation report. Ms. Arsuaga is
20 prepared to address those individually or in whatever
21 way Your Honor would want to proceed, and I'm
22 prepared to deliver the sentencing address to Your
23 Honor generally.

24 THE COURT: Before that, Counsel, you've
25 read the presentence report of course?

Sentencing Hearing - [18] Michael Weiss

1 MR. ROSS: Yes, sir.

2 MS. ARSUAGA: Yes, Your Honor.

3 THE COURT: And has your client read the
4 presentence report?

5 MR. ROSS: Yes, sir, he's read it and we've
6 gone over it with him thoroughly.

7 THE COURT: Aside from the objections, is
8 there any other information in the report that needs
9 to be corrected.

10 MR. ROSS: No, sir.

11 THE COURT: Any from the government?

12 MR. MORGAN: No. I'm not aware of any.

13 THE COURT: Mr. Weiss, any from you?

14 THE DEFENDANT: No.

15 THE COURT: All right. Okay. We will take
16 the objections one by one.

17 MS. ARSUAGA: Your Honor, I'm going to make
18 reference to the motion that we filed, the objections
19 to the presentence investigation report, and I'll go
20 one by one.

21 We did receive -- we'd like to clarify that
22 we received an addendum from the probation office
23 last night; we did review it. And after having
24 reviewed their position as to the objections, we
25 would like to withdraw two of the objections. That

Sentencing Hearing - [18] Michael Weiss

1 would be objection to Paragraph 197 and to
2 Paragraph --

3 THE COURT: 233.

4 MS. ARSUAGA: -- 233. The government --

5 THE COURT: I'm glad you did because they
6 were going to be denied.

7 MS. ARSUAGA: Yes, Your Honor. Probation
8 was correct in saying that they were just repeating
9 what the indictment says, so we are withdrawing
10 those.

11 THE COURT: Thank you.

12 MS. ARSUAGA: Your Honor, then I would move
13 to the objection. So, I can do them as a group, if
14 you'd like, or --

15 THE COURT: One by one.

16 MS. ARSUAGA: One by one. Okay.
17 Paragraph 254 we objected to. What we objected to in
18 that paragraph was the language that says that
19 Mr. Weiss was involved with the Arbudol Group.

20 Our position is that the checks that
21 Mr. Weiss cashed were for Columbus; he had no
22 knowledge of the existence of Arbudol Group. The
23 government has agreed that Mr. Weiss was not aware of
24 the existence of the diversion pharmaceuticals, that
25 is was stated as such in the stipulation of facts in

Sentencing Hearing - [18] Michael Weiss

1 the plea agreement.

2 So, what we're asking is that that language
3 that says that he was involved in Arbudol be
4 stricken, since there's no information that he even
5 knew they existed.

6 THE COURT: All right. Objection is
7 granted. Mr. Arroyo, then you will exclude that.

8 Next one.

9 MS. ARSUAGA: Paragraph 255, Your Honor. It
10 states that among Mr. Weiss' responsibilities was to
11 convert the checks payable to Arbudol Group. We had
12 the same objection. He had no knowledge of the
13 existence of Arbudol Group; we raised a conscious
14 avoidance objection. But he neglected to find out
15 more about the origin and destination of the checks,
16 but at the same time --

17 THE COURT: Isn't that called willful
18 blindness?

19 MS. ARSUAGA: Yes.

20 THE COURT: That's what it's called in the
21 criminal procedure.

22 MS. ARSUAGA: Yes, Your Honor. So, we would
23 make the same objection. These checks were made
24 payable to Columbus, that's what he knew; he had no
25 knowledge, again, of the existence of Arbudol Group.

Sentencing Hearing - [18] Michael Weiss

1 THE COURT: All right. Granted.

2 MR. ROSS: Sorry, Your Honor, what paragraph
3 was that?

4 THE COURT: 256.

5 MS. ARSUAGA: 255.

6 THE COURT: 255, I'm sorry.

7 MS. ARSUAGA: Okay, Your Honor, 256 is just
8 like a background on Arbudol Group. Given, again,
9 that he had no knowledge of this group, we request
10 that that paragraph be stricken.

11 THE COURT: No, not that one, because he did
12 have knowledge of Columbus Wholesale Corporation.

13 MS. ARSUAGA: Okay, Your Honor. Well, we
14 would request then that all the portions that have to
15 do with Arbudol be stricken.

16 THE COURT: No. It will stay as it is
17 because it includes an e-mail that Mr. Christopher
18 Grajewski.

19 MS. ARSUAGA: Yes, Your Honor.

20 THE COURT: All right. 257 was not objected
21 to.

22 MS. ARSUAGA: No, Your Honor.

23 THE COURT: There's Columbus also where he
24 is granted authority to conduct all the business
25 activities on behalf of Columbus Wholesale.

Sentencing Hearing - [18] Michael Weiss

1 258, he provided that letter to Reliable
2 Checking.

3 MS. ARSUAGA: Well, Your Honor, our
4 objection is that he did not provide. We do agree
5 that there was the existence of the letter; what we
6 object to is the statement that Mr. Weiss, himself,
7 provided that.

8 THE COURT: Denied. He did provide it, and
9 it was in the records of reliable checking.

10 MS. ARSUAGA: May I move on.

11 THE COURT: Yeah. 259.

12 MS. ARSUAGA: Okay. In terms of 259, that
13 relates to Money Spot, Inc. We make the same
14 objection that he never provided that letter. As a
15 matter of fact, the language there says that there
16 was no record of anything -- of any checks cashed by
17 him or Grajewski and/or Columbus. So, given that
18 there was no information that Mr. Weiss had anything
19 to do with that, whether or not there was a letter or
20 not, we ask that that be stricken.

21 THE COURT: It shall not be stricken.
22 Although there were no records of any checks cashed
23 either by Mr. Weiss, Grajewski, or on behalf of
24 Columbus Wholesale; nevertheless, the letter was
25 provided to Money Spot. That's what it says there.

Sentencing Hearing - [18] Michael Weiss

1 Denied.

2 MS. ARSUAGA: Okay. 260, Your Honor. 260
3 talks about the diversion pharmaceuticals in which
4 Columbus engaged. We would request, again, that that
5 be stricken. As per the government's position
6 itself, Mr. Weiss had no knowledge of diversion
7 pharmaceuticals. And, again, that was a stipulated
8 fact in the plea agreement.

9 THE COURT: But remember the plea agreement
10 is only sufficient facts so that the Court can
11 determine whether there's a basis in fact for the
12 plea or not. It's not the totality of the
13 government's evidence.

14 MS. ARSUAGA: No, I understand.

15 THE COURT: And it's also not binding on the
16 Court.

17 MS. ARSUAGA: I understand.

18 THE COURT: Objection is denied. That was
19 part of the scheme to defraud precisely. And the
20 checks that were received by Columbus Wholesale he
21 was cashing them, and he knew that they were coming
22 from Drogería de La Villa in Puerto Rico.

23 Next.

24 MS. ARSUAGA: Okay. Paragraph 261, the
25 objection, again, is only to the language that says

Sentencing Hearing - [18] Michael Weiss

1 that he was involved. It just -- the way that it's
2 phrased appears, again, that Mr. Weiss was involved
3 in the diversion and much more involved in just the
4 simple cashing of checks.

5 THE COURT: But that's what it says there.

6 MS. ARSUAGA: Yeah, well, we would request
7 that it just be changed, that Mr. Weiss "cashed
8 checks" as opposed to "was involved."

9 THE COURT: He was involved in the cashing,
10 actively participated in the cashing. That's what
11 involvement means; that he was in it cashing the
12 checks. Semantics. Denied.

13 MS. ARSUAGA: I know it's semantics, Your
14 Honor.

15 THE COURT: Okay, that's why I'm denying it.
16 Next.

17 MS. ARSUAGA: Okay. Paragraph 267.

18 THE COURT: Forget about 263?

19 MS. ARSUAGA: I'm sorry. 262. I'm sorry.
20 I don't have my glasses and I read it wrong.

21 Your Honor, in terms of this objection, the
22 amount that the government agreed that was readily
23 approvable, the amount of loss, was between
24 400,000 --

25 THE COURT: In 263 it doesn't mention that.

Sentencing Hearing - [18] Michael Weiss

1 MS. ARSUAGA: 262, I'm sorry, Your Honor.

2 And it talks about the amount of \$1,294,201.

3 THE COURT: Yeah.

4 MS. ARSUAGA: As per the government, we
5 believe that what was readily approvable -- we're not
6 denying that there might be evidence of other checks.
7 What we are -- our position is -- and it was the
8 government's position also -- that what they could
9 prove at that point beyond a reasonable doubt was
10 that Mr. Weiss was involved in an amount of loss
11 between 400,000 and less than a million.

12 THE COURT: That was stipulated in the
13 statement of facts, but there is in record here that
14 they could prove \$6 million also.

15 MS. ARSUAGA: Well, Your Honor, but
16 probation itself agreed in the amount of loss.

17 THE COURT: Well, that's probation. I'm not
18 bound by probation. Okay? Objection is denied.

19 263.

20 MS. ARSUAGA: Okay. 263, our objection,
21 Your Honor, we reiterate that it was not Michael
22 Weiss who provided the letter to the agency.

23 THE COURT: All right. That objection is
24 denied.

25 264.

Sentencing Hearing - [18] Michael Weiss

1 MS. ARSUAGA: 264, Your Honor, we went
2 through all the documents that the government
3 provided us and we did not find any single document
4 that showed that the amount that he presented to the
5 bank represented partial payment for an invoice.
6 That's our position. We don't have any evidence that
7 this existed.

8 THE COURT: The 200,000?

9 MR. ROSS: Correct, Your Honor.

10 MS. ARSUAGA: Yes, Your Honor.

11 THE COURT: Well, that's what he
12 represented, according to the --

13 MS. ARSUAGA: No, not the 200,000. It says
14 that that 200,000 -- what we're objecting to is that
15 it says that that 200,000 that he used to open the
16 account it represented partial payment for an
17 invoice. What we're saying is that we have no
18 evidence -- we went through every single document,
19 and we don't have any evidence of that invoice or
20 that that 200,000 was partial payment for that
21 invoice.

22 I don't know if the government has another
23 position as to that, but we don't -- again, we went
24 through everything and we didn't find it.

25 THE COURT: Mr. Morgan.

Sentencing Hearing - [18] Michael Weiss

1 MR. MORGAN: Your Honor, I can't speak to
2 that specific fact. I just don't have the
3 information.

4 THE COURT: Where's Mr. Walsh?

5 MR. MORGAN: No, he hasn't put me in a
6 position to --

7 THE COURT: Where is he?

8 MS. ARSUAGA: He's in trial, Your Honor.

9 MR. MORGAN: He's at trial. That's the
10 reason I'm here. He's at trial with Judge Cerezo.

11 THE COURT: All right. We'll leave that one
12 up in the air.

13 Next one.

14 MS. ARSUAGA: Yes. 266, Your Honor.

15 THE COURT: 265 is not objected?

16 MS. ARSUAGA: No.

17 THE COURT: All right.

18 MS. ARSUAGA: 266. We object to the first
19 two sentences that read -- should I read them out
20 loud, Your Honor?

21 THE COURT: I'm sorry?

22 MS. ARSUAGA: Should I read the sentences to
23 which he's objecting to?

24 THE COURT: The first two ones you object?

25 MS. ARSUAGA: Yes.

Sentencing Hearing - [18] Michael Weiss

1 THE COURT: Based on what?

2 MS. ARSUAGA: Well, Mr. Weiss' position is
3 that he never contacted the bank to state that he
4 was -- why he had provided a false Social Security
5 number. Obviously he's not denying that he went to
6 the bank, that he opened this account; he has taken
7 responsibility for that. But --

8 THE COURT: But with a false name and Social
9 Security number.

10 MS. ARSUAGA: Yes, he understands that.
11 What we're objecting to is that he called later on.
12 He denies having done so.

13 THE COURT: You're objecting to the fact
14 that he called the bank, not the fact that he did
15 present the false --

16 MS. ARSUAGA: No. No. Just the fact that
17 he called the bank.

18 THE COURT: Well, it says "contacted the
19 bank..."

20 MS. ARSUAGA: Yes. It would be where it
21 says "contacted the bank and said he provided the" --
22 explaining why he provided it -- and "that he would
23 be turning the matter over to his attorney." Up to
24 that point. Mr. Weiss denies having made that call.

25 And, again, Your Honor, the government

Sentencing Hearing - [18] Michael Weiss

1 received these objections and they -- we spoke to
2 them -- to Mr. Walsh about them. We went through all
3 of them. We actually filed an addendum as to this,
4 to clarify that Mr. Weiss was not denying
5 responsibility. But the government did not respond
6 to this; so, I guess we're to understand that they
7 agree with that one.

8 THE COURT: No, I can't do that; I can't
9 take that leap. Besides that, even if the government
10 doesn't respond, if you take those two sentences out
11 then the rest of it doesn't make any sense at all;
12 because there was an attorney supposedly that called
13 the bank. And then the name of that attorney was
14 contacted by the agents, the government's
15 investigation; that he never represented or contacted
16 Apple; and the \$200,000 was seized ultimately and
17 forfeited. That I don't know. I don't see why you
18 don't object to that, but --

19 MS. ARSUAGA: Where? I'm sorry, Your Honor,
20 where?

21 THE COURT: The last sentence of that
22 paragraph.

23 MS. ARSUAGA: 266.

24 THE COURT: Yeah, you don't object to it?

25 MS. ARSUAGA: Well, we object to the fact

Sentencing Hearing - [18] Michael Weiss

1 that it was the Arbudol Group, but we do know for a
2 fact that it was seized and it was forfeited.

3 THE COURT: Okay, so, there's no objection
4 to that. Objection to 266 is denied.

5 268 -- 267 is accepted.

6 MS. ARSUAGA: Is accepted.

7 THE COURT: All right. 268.

8 MS. ARSUAGA: 268. Our position is that,
9 again, that the amount -- we understand that there
10 might be evidence of further checks, but the amount
11 that the government believed was readily provable was
12 100,000 to a million.

13 THE COURT: And here's 712,000.

14 MS. ARSUAGA: Yes.

15 THE COURT: So, the objection is denied.

16 MS. ARSUAGA: Two hundred --

17 THE COURT: 269.

18 MS. ARSUAGA: We object to the last two
19 sentences. The basis for this objection, Your Honor,
20 is that this is, we believe, an assumption on the
21 part of probation. There's no evidence --

22 THE COURT: Okay. Granted. The last two
23 sentences will be stricken from that 269. "Starting
24 on March 8, 2007," that will be eliminated.

25 270.

Sentencing Hearing - [18] Michael Weiss

1 MS. ARSUAGA: 270, Your Honor, we're
2 withdrawing 270, Your Honor. We're just going to
3 address 271.

4 THE COURT: Okay. Thank you.

5 MS. ARSUAGA: 271, our objection is to the
6 inclusion of this amount of \$3,644,228.96. The --
7 that amount, as per language of probation, was
8 included because they stated it was presumed that he
9 was involved in this amount. There's no concrete
10 evidence that he was. And, again, Mr. Weiss, we
11 understand, cannot be sentenced based on
12 suppositions.

13 THE COURT: Granted.

14 MS. ARSUAGA: Okay. We did not object to
15 272 --

16 THE COURT: No.

17 MS. ARSUAGA: -- so we move to 273.

18 MR. ROSS: Judge, with respect to
19 Paragraph 273, I had planned during my address to the
20 Court on a general sentence to address really the
21 only issue that is in play this morning before the
22 Court; and that is, whether or not the Court --

23 THE COURT: I'm not going to grant the three
24 points for minor --

25 MR. ROSS: You're not going to do that?

Sentencing Hearing - [18] Michael Weiss

1 THE COURT: I'm not going to follow the
2 probation officer's recommendation that he did not --
3 that he not be considered a minor participant. So,
4 that does away with that argument.

5 MR. ROSS: Okay, but if Your Honor may, and
6 I would just like to take two minutes of Your Honor's
7 time this morning -- I know you're busy -- to try to
8 change your mind on that.

9 THE COURT: On what?

10 MR. ROSS: It's a very important thing --

11 MS. ARSUAGA: No, he's saying that he's not
12 going to follow it.

13 MR. ROSS: Or you're not going to follow
14 probation. Okay.

15 THE COURT: That's what I said. So your
16 base offense -- total offense level remains at, 15
17 not 18, as was recommended.

18 MR. ROSS: Okay.

19 MS. ARSUAGA: So, we don't have to address
20 that issue.

21 THE COURT: That's right.

22 MS. ARSUAGA: May I move on to 274.

23 THE COURT: Yes.

24 MS. ARSUAGA: 274. It states that Mr. Weiss
25 was involved in the cashing and negotiated

Sentencing Hearing - [18] Michael Weiss

1 approximately 6 million. From our understanding, and
2 our conversation with Mr. Walsh, this is not
3 supported by evidence. This amount is --

4 THE COURT: Well, we'll have to talk to
5 Mr. Walsh about it.

6 MS. ARSUAGA: I believe 275, Your Honor,
7 really goes to the role. I don't know if we need to
8 address it. It's just presenting their opinion that
9 Mr. Weiss' participation and his role in this offense
10 was more substantial than it was.

11 THE COURT: Mm-hmm, that's right.

12 MS. ARSUAGA: So, I don't believe we need to
13 address that.

14 THE COURT: Mm-hmm. Thank you.

15 286.

16 MS. ARSUAGA: Okay. So, 286, I believe, is
17 more towards victim impact. We object to that
18 paragraph as my understanding is there were no
19 victims in this case.

20 THE COURT: Well, there are no victims that
21 can be --

22 MS. ARSUAGA: Ascertained.

23 THE COURT: -- ascertained. Certainly there
24 were two victims: The two identity thefts that were
25 made. Although probation states that there are "no

Sentencing Hearing - [18] Michael Weiss

1 consequences," but certainly they are victims and
2 they did have to go through some problems getting
3 their credit cards cancelled and getting their new
4 driver's license, et cetera. And even though there's
5 no harm, there are victims. Certainly there are
6 victims.

7 Plus, the extent of this scheme was huge, as
8 from the record and the evidence that is in the
9 presentence report and other areas of the case --
10 over \$600 million worth. And I'm not saying that it
11 all came from Columbus or Arbudol Group, but
12 certainly the diversion of these drugs -- we have the
13 pharmaceuticals were stored in warehouses, did not
14 meet FDA standards, counterfeit labels, incorrect
15 dosage amounts, incorrect lot numbers, incorrect
16 medicines. Patient pharmacy chemicals were used to
17 remove patient levels. That seeped through the
18 bottles and contaminated pills and modified
19 expiration dates were distributed.

20 However, we will never know the impact to
21 the health of those -- the sick, the elderly,
22 children, and others -- who were dispensed these
23 diverted pharmaceuticals. Certainly we do have
24 victims; we just can't say who they are. Denied.

25 MS. ARSUAGA: Very well, Your Honor.

Sentencing Hearing - [18] Michael Weiss

1 So, I believe then, Your Honor, now we
2 should move to --

3 THE COURT: 339 an 340.

4 MS. ARSUAGA: -- 339 and 340. We would like
5 to state to the Court that Mr. Weiss has complied
6 with the forfeiture payment of 150,000. He sent that
7 this week -- this past week. He sent it to the
8 marshals, and we have a receipt that he has paid.

9 Mr. Weiss, we do not believe that he has the
10 ability to pay a fine and we'd also like the Court to
11 take into consideration the fact that he has also
12 complied with a substantial amount of 150,000.

13 THE COURT: So, he has complied with the
14 forfeiture of 150,000?

15 MS. ARSUAGA: Yes.

16 MR. ROSS: Yes, sir, we have a receipt from
17 Marshal Blandon.

18 THE COURT: So what's your objection to 339?

19 MS. ARSUAGA: Well, we're just requesting
20 that no fine be imposed.

21 THE COURT: Ah, okay.

22 MS. ARSUAGA: We understand what the fine
23 range is and we understand that the Court could
24 impose a fine; we're just requesting that the Court
25 take into consideration the huge amount forfeiture

Sentencing Hearing - [18] Michael Weiss

1 and the fact that he paid it.

2 THE COURT: Okay. That's as to the
3 objections. Anything else as to the objections?

4 MS. ARSUAGA: No, Your Honor, not as to the
5 objections.

6 MR. ROSS: No, sir.

7 THE COURT: All right. Anything you want to
8 state to the Court on behalf of your client?

9 MR. ROSS: Yes, Your Honor. Thank you.

10 THE COURT: Go ahead.

11 MR. ROSS: Since Your Honor's made it clear
12 to us that you are giving Mr. Weiss the benefit of
13 our agreement with the government and that the
14 guideline range level will be 18 to 24 months, as set
15 forth in the plea agreement, I don't need to waste
16 the Court's time in arguing why we thought that
17 should apply.

18 What I would like to do, however, is to
19 address the Court with respect to 18, United States
20 Code, §3553 and the factors that the Court must
21 consider in sentencing Mr. Weiss this morning. I'd
22 ask Your Honor to sentence him at the lowest end of
23 the guideline range, as we have agreed upon with the
24 government. It's a joint recommendation to the Court
25 by the defense and the government that Mr. Weiss

Sentencing Hearing - [18] Michael Weiss

1 receive a sentence of 18 months. And the factors
2 under §3553 do support a sentence of 18 months here
3 in this case.

4 Michael Weiss is a constantly devoted family
5 man, Your Honor. His wife is here with him, he is a
6 loving husband; and he is a fully-caring and
7 always-involved father with his children.

8 He has many, many extended family members
9 who write wonderful letters to the Court on his
10 behalf. We included them in the sentencing
11 memorandum -- which I must say Ms. Arsuaga took -- it
12 was a collaborative effort, I certainly worked on it,
13 but she took a laboring oar on really delving into
14 these letters and presenting Your Honor a picture of
15 a man whose family loves him, whose family respects
16 him. It's a strong and closely-knit extended family.

17 And Mr. Weiss always gives his time, his
18 energy, and his love to each and every one of his
19 extended family members; he's there for them on a
20 daily basis. It's going to be a real loss to his
21 extended family that he is going to have to spend
22 some time in jail.

23 And it's been a terrible punishment in and
24 of itself for a man like Mr. Weiss to explain to all
25 his brothers and sisters and his wife, and

Sentencing Hearing - [18] Michael Weiss

1 particularly his little kids, about the fact that he
2 did something wrong, that he committed a crime, that
3 he has to pay a debt to society, that he must do it
4 and that that was a terribly punitive thing for him
5 to have to experience as a person.

6 And he's gone through that, he's taken full
7 responsibility. He is full of remorse this morning,
8 Your Honor, really sorry that he got involved in all
9 of this. He's just a deeply generous man to his
10 friends, his family, his kids, his wife, he's a man
11 of loyal character and just an incredibly and
12 tirelessly hard worker with respect to supporting
13 them and being there for them all.

14 A higher sentence than the jointly
15 recommended sentence to the Court would be
16 devastating to his family, to the extended members of
17 his family, all of his brothers and sisters and their
18 kids who so look up to him and who feel so badly that
19 he let them down and that he made this awful decision
20 to get involved in criminal conduct, which he is
21 deeply remorseful for.

22 He will tell the Court this morning, he'll
23 tell you, Your Honor, that he's ashamed of his
24 criminal conduct and that he knows that he let the
25 most important people in his life down; and that the

Sentencing Hearing - [18] Michael Weiss

1 most important people who love him he has put them in
2 a position to not have him there for them and have
3 him there to lean on and for friendship and for
4 support and all of that.

5 Your Honor, he is highly, highly unlikely to
6 be back before any court ever again. He's a
7 first-offender, he is happily married. As I said,
8 his wife's here in court with him today. He has this
9 very, very strong family network that I've been
10 referring to. He's repentant and just tormented by
11 what he's had to explain to his wife, to his young
12 children -- that he's going away to jail for his
13 criminal conduct.

14 Michael Weiss, the Michael Weiss that I
15 know, Your Honor, is a humble man, he is a
16 kind-hearted man, and he is remorseful this morning
17 straight from the core of his being. You will hear
18 from him.

19 I suggest, Your Honor, most respectfully
20 that he deserves the Court's understanding and mercy
21 and lenity, and I most respectfully ask Your Honor,
22 in accordance with the jointly proposed sentencing
23 recommendation of the defense and the government of
24 18 months, that you impose the 18-month sentence of
25 incarceration upon him this morning.

Sentencing Hearing - [18] Michael Weiss

1 We would ask that there not be a fine
2 imposed. As we said, he's paid \$150,000 of
3 forfeiture. To the extent that probation had any
4 problem with the financial statement, we've provided,
5 as Your Honor, I'm sure, has heard, a statement from
6 his accounting professionals. And if Your Honor
7 wanted to make a condition of the sentence a full
8 disclosure of his finances, that would be fine with
9 us.

10 And, finally, I understand through speaking
11 with Ms. Arsuaga and other members of the Court here
12 that appear before Your Honor regularly that it is
13 your practice to make a recommendation, if requested,
14 to a specific facility of the federal Bureau of
15 Prisons. And I would ask, on behalf of Mr. Michael
16 Weiss, that Your Honor recommend to the BOP the
17 facility of the FCI in Otisville. Otisville is in
18 New York, it's close to his family. And it's also a
19 place that has religious services available so that
20 he can practice his Jewish faith.

21 We would finally ask, Your Honor, for a
22 voluntary surrender and -- a date in August for him
23 to voluntarily surrender.

24 THE COURT: That's up to the marshals
25 whenever they call him in. They deal -- that's the

Sentencing Hearing - [18] Michael Weiss

1 Bureau of Prisons' work. That's their function.

2 MR. ROSS: So they'll notify us as to when
3 he needs to surrender to wherever he's designated.

4 THE COURT: That would be correct.

5 MR. ROSS: Thank you, sir. Thank you for
6 hearing me this morning, Your Honor, and I'd just
7 like to thank the Court for its consideration and
8 thank the government for respecting the plea
9 agreement. I'd also like to thank Maria Arsuaga who
10 for many years was a federal public defender here,
11 and she did incredible work on this case. And I
12 thank you for hearing me, sir.

13 THE COURT: Thank you.

14 Mr. Weiss? Would you care to say anything?
15 You do not have to say anything, but if you wish you
16 may do so.

17 MS. ARSUAGA: I believe he's --

18 THE COURT: Sorry?

19 MS. ARSUAGA: I believe he is not going to
20 make a statement.

21 THE COURT: Okay. He's entitled to that.
22 Anything from the government?

23 MR. MORGAN: Your Honor, I understand that
24 this particular individual plead very early, and that
25 should be the basis for our recommendation of the

Sentencing Hearing - [18] Michael Weiss

1 lower end of the guidelines. The lowest end of the
2 plea agreement says, since Your Honor's going with
3 the Level 15, then that would certainly be the
4 18 months. And we stand firmly behind the
5 recommendation of the plea agreement.

6 THE COURT: Thank you.

7 On October 11, 2013, Defendant Michael Weiss
8 plead guilty to Count 47 of the indictment in
9 Criminal No. 12-922 charging him with violating Title
10 18, United States Code, Sections 1349, 1341, and 1343
11 which are Class C felonies.

12 The Court has used the November 1, 2013
13 edition of the United States sentencing guideline to
14 apply the now advisory guideline adjustments. In
15 this case, the guideline is Guideline 2B1.1 with a
16 base offense level of seven [7] has been determined
17 as the offense of conviction involved a conspiracy to
18 commit mail- and wire fraud.

19 Although the intended loss was over
20 \$6 million, the parties have stipulated a loss amount
21 of at least 400,000 but less than \$1 million. As
22 such, a 14-level enhancement is warranted pursuant to
23 Guideline 2B1.1(b)(1)(H). Finally, as the defendant
24 has accepted personal responsibility for his criminal
25 conduct, the offense level is reduced three [3]

Sentencing Hearing - [18] Michael Weiss

1 levels pursuant to Guideline 3E1.1. There are no
2 other applicable guideline adjustments.

3 MR. ROSS: Your Honor, with respect to the
4 2B1.2 role reduction --

5 THE COURT: Yes? I'm sorry? Yes? Pursuant
6 to Guideline 3B1.2(b), there's a mitigating role for
7 a three-level reduction for a minor participant
8 giving us a total offense level of 15, which is the
9 guideline range 18 to 24, with a fine range of --

10 PROBATION OFFICER ARROYO: 4,000 to 40,000.

11 THE COURT: -- 4,000 to 40,000, plus a
12 supervised release term of at least one [1] but less
13 than three [3] years.

14 The Court has reviewed the presentence
15 investigation report and considers that the same is
16 adequately applied to the guideline computations and
17 satisfactorily reflects the components of this
18 offense by considering the nature and circumstances
19 of the instant offense, and the sentencing factors
20 set forth in 18 U.S.C. §3553(a).

21 Before the Court is a 37-year-old married
22 man with a high school obtained -- high school
23 education obtained in private Hebrew schools. He has
24 two children. No history of mental health issues or
25 substance abuse. The Court, in imposing a sentence,

Sentencing Hearing - [18] Michael Weiss

1 has considered the nature and circumstances of the
2 offense and the defendant's history and
3 characteristics.

4 The Court has also taken into consideration
5 the plea agreement between the parties and finds that
6 a sentence pursuant to said plea agreement, within
7 the applicable guideline range, will afford adequate
8 deterrence and provide just punishment for the
9 offense committed.

10 Pursuant to the plea agreement at
11 Paragraph 8, it states that the parties will
12 recommend a sentence at the lower end of the
13 stipulated offense level, that is the recommendation
14 that was made; but Paragraph 8 further states that
15 the defendant agrees that any sentence imposed within
16 the stipulated total offense level is reasonable
17 pursuant to 18 U.S.C. §3553(a). Pursuant to that, it
18 is therefore the judgment of this Court that the
19 defendant is hereby fined in the amount of 250,000 to
20 be paid forthwith and committed to the custody of the
21 Bureau of Prisons to be imprisoned for a term of
22 24 months.

23 Upon release from confinement, you shall be
24 placed on supervised release for a term of three [3]
25 years under the following conditions:

Sentencing Hearing - [18] Michael Weiss

1 You shall not commit another federal, state,
2 or local crime and you shall observe the standard
3 conditions of supervised release recommend by the
4 Sentencing Commission and adopted by this Court.

5 You shall not unlawfully possess controlled
6 substances, refrain from possessing firearms,
7 destructive devices, and other dangerous weapons.

8 You shall provide the probation officer
9 access to any financial information upon request.

10 You shall submit your person, property,
11 house, residence, vehicle, papers, computers, other
12 electronic communications or data storage devices or
13 media or office to a search conducted by the United
14 States probation officer at a reasonable time and in
15 a reasonable manner based upon reasonable suspicion
16 of contraband or evidence of a violation of condition
17 of release. Failure to submit to such a search may
18 be grounds for revocation.

19 You shall warn any other occupants that the
20 premises may be subject to searches pursuant to this
21 condition.

22 You shall cooperate in the collection of a
23 DNA sample as directed by the probation officer
24 pursuant to the revised DNA collection requirements
25 and 18 U.S.C. 3563(a)(9).

Sentencing Hearing - [18] Michael Weiss

1 Pursuant to the plea agreement, which I just
2 read, the sentence recommendation at Paragraph 8, you
3 agree in Paragraph 16 of your plea agreement that if
4 the Court were to accept the plea agreement -- which
5 I have, and I have sentenced you according to its
6 recommendation, terms and conditions -- which was
7 that any sentence imposed within the stipulated total
8 offense level would be reasonable, pursuant to
9 18 U.S.C. 3553(a), that being level 15, the
10 stipulated total offense level carries a guideline
11 sentence of 18 to 24 months.

12 The Court has sentenced you to 24 months,
13 which is within the stipulated total offense level;
14 therefore, your waiver becomes effective and I will
15 advise you that -- I will not advise you that you
16 have any right to appeal the sentence and judgment of
17 this Court and the forfeiture issue, since you have
18 waived the same and surrendered your right to appeal
19 the judgment. As I understand it, the waiver becomes
20 effective.

21 Any remaining counts of the indictment are
22 hereby dismissed as to Mr. Weiss. And the Court will
23 recommend to the Bureau of Prisons that, if he does
24 qualify, that he be designated to serve the sentence
25 at the federal correctional institution in Otisville,

Sentencing Hearing - [18] Michael Weiss

1 New York; and that the Court will allow Mr. Weiss to
2 voluntarily surrender to whatever institution is
3 designated by the Bureau of Prisons.

4 And what that means is, sir, that you will
5 be out on bound until you are notified by the marshal
6 service where and when and at what time you must
7 report.

8 PROBATION OFFICER ARROYO: Your Honor, U.S.
9 Probation Officer Miguel Arroyo. A special monetary
10 assessment.

11 THE COURT: In the amount of \$100 also
12 imposed pursuant to law. Thank you.

13 MR. MORGAN: Your Honor, the judgment, you
14 mentioned forfeiture, but are you entering the order
15 of the forfeiture for the \$150,000?

16 THE COURT: They have already paid it.

17 MR. MORGAN: I understand, but I just want
18 to later on --

19 THE COURT: Okay.

20 MR. MORGAN: -- included in the judgment
21 even though it has already been paid.

22 THE COURT: Okay. It shall be included in
23 the judgment. Thank you.

24 MR. ROSS: Your Honor, if I may, briefly. I
25 don't want to interrupt the Court in what it's

Sentencing Hearing - [18] Michael Weiss

1 saying, but before we impose final sentence I'd just
2 like to point out --

3 THE COURT: I have imposed the final
4 sentence.

5 MR. ROSS: I understand, Judge, but just
6 give me one moment to try to change your mind on a
7 couple of things. The 250,000-dollar fine that Your
8 Honor imposed, I'm sure you're aware, is the
9 statutory maximum fine.

10 THE COURT: I know.

11 MR. ROSS: The range set forth in the --

12 THE COURT: 6- to 60,000.

13 MS. ARSUAGA: 4- to 40,000 -- 4,000 to
14 40,000.

15 MR. ROSS: And it's a -- particularly for
16 someone who was agreed upon to be involved in a minor
17 capacity, to impose the statutory maximum fine seems,
18 I would respectfully suggest to the Court, to be a
19 harsh monetary penalty especially given that Your
20 Honor has imposed an additional six months and
21 brought Mr. Weiss up to the highest end of the
22 guideline range instead of the lowest end, which was
23 the joint recommendation of the government and the
24 defense.

25 THE COURT: And as you recall from the

Sentencing Hearing - [18] Michael Weiss

1 change of plea hearing, I advised your client and
2 both of you that I was not bound by any sentencing
3 recommendation.

4 MR. ROSS: I understand that.

5 THE COURT: And I imposed a sentence that is
6 included in Paragraph 8 of the plea agreement, which
7 is that any sentence that is within the total offense
8 level would be a reasonable sentence.

9 MR. ROSS: I understand, Judge. I
10 understand it's stipulated; and we did that, I'm not
11 saying that we didn't. All I'm saying is I'm asking
12 please if Your Honor would reconsider this morning
13 both the maximum statutory fine that you've imposed.

14 And I'm not saying that we didn't stipulate
15 that any sentence within the range is reasonable --
16 we did, and we don't have an appeal right now -- I'm
17 just trying in this court before Your Honor to change
18 your mind and bring the fine down some. And, also,
19 the additional six months that Your Honor has imposed
20 here will be a terrible hardship for the family. It
21 will be a terrible hardship for the family, and I'd
22 ask Your Honor to reconsider that and sentence
23 Mr. Weiss at the 18-month level.

24 THE COURT: Your consideration is denied.

25 MR. ROSS: Thank you, sir.

Sentencing Hearing - [18] Michael Weiss

1 THE COURT: Counsel, by the way, I just want
2 the record to be clear. The probation office,
3 through Mr. Arroyo, requested, in February of this
4 year, that Mr. Weiss provide financial statements;
5 right?

6 MR. ROSS: Yes, sir.

7 THE COURT: We are now in May -- that's
8 90 days -- over 90 days ago -- and all that was
9 received was a letter from some accounting firm up in
10 New York saying that any requests should be addressed
11 to them.

12 The probation office in this district is not
13 here to talk to accountants or whatever. The request
14 was very specific, very clear, and Mr. Weiss hasn't
15 come forth with it. So, I have no other way than to
16 impose 250,000 was the maximum fine available by
17 statute, since I have no other information -- I don't
18 have any information whatsoever. Besides, you don't
19 play around with this Court or with the probation
20 officer.

21 MR. ROSS: I understand, sir.

22 THE COURT: All right.

23 MR. ROSS: Thank you for hearing us.

24 THE COURT: You're welcome. You may
25 withdraw.

Sentencing Hearing - [18] Michael Weiss

(Sentencing Hearing concluded at 12:14 p.m.)

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Sentencing Hearing - [18] Michael Weiss

1 UNITED STATES DISTRICT COURT)
2 OF) ss.
3 PUERTO RICO)
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6

7 CERTIFICATE
8
9

10 I, EVILYS E. CARRIÓN-ESQUILÍN, hereby
11 certify that the proceedings and evidence are
12 contained fully and accurately, to the best of my
13 ability, in the notes recorded stenographically by
14 me, at the sentencing hearing in the above matter;
15 and that the foregoing is a true and accurate
16 transcript of the same.
17

18 /s/ Evilys E. Carrión-Esquilín

19 EVILYS E. CARRIÓN-ESQUILÍN, RPR
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